



Date: May 6, 2013

To: ABAG PLAN Executive Director
ABAG PLAN Executive Committee

From: Jim Hill, ABAG PLAN - Risk Management Officer

Subject: Assembly Bill 738 (Harkey); Public Entity Liability – Bicycle Lanes

Recommendation

ABAG PLAN staff is recommending that each PLAN member voice their support of this emerging piece of legislation. Staff also encourages the ABAG Legislation & Governmental Organization Committee and their constituents to support the Assembly Bill.

Overview

AB 738 was introduced on February 21, 2013 by Assembly Member Diane Harkey (73rd District – Southern California) and principally co-authored by Assembly Members Frank Bigelow (5th District – Central California) and Curt Hagman (55th District – Southern California).

As introduced, this bill would provide that a public entity or an employee of a public entity acting within his or her official capacity is not liable for an injury caused to a person riding a bicycle while traveling on a roadway, if the public entity has provided a bike lane on that roadway.

The bill is supported by the California Association of Joint Powers Authority and by a host of insurance pool administrators.

Analysis

AB 738 is officially titled: **An act to add Section 830.7 to the Government Code, and to add Section 21207.1 to the Vehicle Code, relating to public entity liability.**

The bill was originally referred to the Assembly Judiciary Committee to be heard on March 24th. The hearing was re-scheduled for April 23rd but subsequently cancelled at the request of the author.

Existing law gives a public entity or public employee immunity from liability for an injury caused by the plan or design of construction of or improvement to public property in certain cases. Existing law allows public entities to establish bicycle lanes on public roads. This bill would provide that a public entity or an employee of a public entity is not liable for any injury caused to a person riding a bicycle while traveling on a roadway, if the public entity has provided a bike lane on that roadway.

The bill would help cities and towns avoid costly litigation brought against them in certain cases where there may be zero liability on behalf of the city, however, dangerous condition arguments are raised solely based on the installation of the bicycle lane on the public roadway.

Each of our member cities recognizes the value of providing for safe passage of both motorists and bicyclists. Many cities encourage the use of bicycles as an alternative means of travel to reduce traffic congestion and to promote healthy lifestyles. AB738 will provide a sensible reduction in liability for public entities that construct and provide bike lanes as a public benefit to their community constituents if someone is injured while using the bike lane(s).

PLAN's Best Practices program strongly encourages the use of Caltrans specifications when planning and creating bicycle lanes. PLAN member agencies are conscious of the need to keep our streets and sidewalks safe from dangerous conditions. The absence of this bill creates an additional burden on cities that support the bicycling community and choose to install bicycle lanes for the pleasure and use of bicyclist.

Conclusion

Bicycle lanes are intended to make public roads safer for bicyclists and allow our roads/streets to be shared by both automobiles and bicycles. Liability imposed on public agencies for injuries to bicyclists that are caused by bad drivers discourages the installation of such lanes. **AB 738** would reduce the amount of "deep pocket" lawsuits against public entities for injuries caused to bicyclist by bad drivers. Immunity from these "deep pocket" lawsuits will encourage public entities to install bicycle lanes for the benefit of the bicycling community.

ABAG PLAN strongly supports this legislation. We are currently facing several lawsuits where there is no clear liability on behalf of the city/town and all alleged injuries were the result of bad drivers who struck individuals who were using bicycle lanes. We are requesting all ABAG PLAN members to send letters voicing their support of this legislation to their elected representatives. We are encouraging members to do everything in their power to see that this bill, or a similar bill, is put into effect by our Legislators.